

No. 837

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

JESSE M. SMITH, EPHRAIM P. ELLISON, ELIAS ADAMS,
JOHN W. THORNLEY, JAMES W. CHIPMAN, JAMES
LOVE, ANTHON J. NEILSON, BENJAMIN R. MEEK,
PETER A. NEILSON, JOSEPH S. NEILSON, HEBER A.
SMITH, HANS S. NEILSON, ANDREW ALLEN, ELLS-
WORTH ALLEN, RILEY ALLEN, ISAAC DUNYON, AU-
RELIUS FITZGERALD, HENRY CHIPMAN, BENJAMIN
DANSIE, THOMAS MERCER, WILLIAM AYLETT, HEBER
AYLETT, JOHN A. EGBERT, GEORGE DANSIE, FRANK
DANSIE, WILLIAM CRANE, I. J. FREEMAN, JOSEPH R.
OLSEN, L. PARKER,

Appellants,

vs.

THOMAS G. LOWE, JOHN R. THOMAS, DAVID W. JONES,
D. H. ANDERSON, JOHN DOE, and RICHARD ROE,
Whose Other or True Names are Unknown,

Appellees.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States Circuit Court
for the District of Idaho.

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In the Circuit Court of the United States in and for the District of Idaho.

IN EQUITY.

JESSE M. SMITH, EPHRIAM ELLISON, ELIAS ADAMS, JOHN W. THORNLEY, JAMES W. CHIPMAN, JAMES LOVE, ANTHON J. NEILSON, BENJAMIN R. MEEK, PETER A. NEILSON, JOSEPH S. NEILSON, HANS S. NEILSON, HEBER A. SMITH, ANDREW ALLEN, ELLSWORTH ALLEN, RILEY ALLEN, ISAAC DUNYON, AURELIUS FITZGERALD, ISAAC FITZGERALD, HENRY CHIPMAN, BENJAMIN DANSIE, THOMAS MERCER, WILLIAM AYLETT, HEBER AYLETT, JOHN A. EGBERT, GEORGE DANSIE, FRANK DANSIE, WILLIAM CRANE, I. J. FREEMAN, JOSEPH R. OLSEN, L. PARKER,

Complainants,

vs.

THOMAS G. LOWE, JOHN R. THOMAS, DAVID W. JONES, D. H. ANDERSON, JOHN DOE, RICHARD ROE, Whose Other or True Names are Unknown,

Defendants.

Bill of Complaint.

To the Honorable, the Judges of the Circuit Court of the United States for the District of Idaho:

Jesse M. Smith, Ephriam P. Ellison, Elias Adams, and John W. Thornley, of Layton, Davis County, James W. Chipman, and James Love, of Kaysville, Davis County, Anthon J. Neilson, Benjamin R. Meek, Peter A. Neilson, Joseph S. Neilson, Hans S. Neilson, Heber A. Smith, Andrew Allen, Ellsworth Allen, Riley Allen, Isaac Dunyon, Aurelius Fitzgerald and Isaac Fitzgerald, of Draper, Salt Lake County, Henry Chipman and Benjamin Dansie, of Salt Lake City, Thomas Mercer, of Ogden, William Aylett, Heber Aylett, John A. Egbert, of West Jordan, Salt Lake County, George Dansie, and Frank Dansie, of Riverton, Salt Lake County, William Crane, and I. J. Freeman, of Herriman, of said Salt Lake County, Joseph R. Olsen, of Brigham City, of Salt Lake City, L. Parker, of American Fork, and all citizens of the State of Utah, bring this, their bill against Thomas G. Lowe, of Franklin, John R. Thomas of Malad, David W. Jones, of Cherry Creek, D. H. Anderson, of Samaria, and John Doe and Richard Roe, whose other and true names are unknown, and whose names and residences are to your orators unknown, but who are acting for and in behalf of said defendants, but all of whom are citizens and residents of the State of Idaho, and citizens of the United States, and thereupon your orators complain and say:

First.—That said complainants are and at all times hereinafter mentioned were the owners, in the possession, and entitled to the possession of the number of sheep placed after their respective names, to wit, Jesse M. Smith, 2,000; Ephriam P. Ellison, 3,000; Elias Adams, 3,000; John W. Thornley, 2,000; James W. Chipman, 2,000; Henry Chipman, 2,000; James Love 1,500; An-

thon J. Neilson and Benjamin R. Meek, 2,000; Peter A. Neilson, Joseph S. Neilson, Hans S. Neilson, 4,000; Heber A. Smith, 4,000; Andrew Allen, 1,500; Ellsworth Allen, 1,500; Riley Allen, 1,000; Isaac Dunyon, 2,000; Aurelius Fitzgerald, 2,000; Isaac Fitzgerald, 2,000; Thomas Mercer, 8,000; William Aylett, 4,000; Heber Aylett, 2,000; John A. Egbert, 4,000; George Dansie, Frank Dansie and Benjamin Dansie, 5,000; William Crane, 4,000; I. J. Freeman, 2,000; Joseph R. Olsen, 5,000; L. Parker, 2,000.

That the amount in controversy in this action exceeds in value the sum of two thousand dollars, exclusive of interest and costs.

Third.—That the “public domain,” as hereinafter used, refers only to and are intended to mean the wild, unclaimed lands of the Government of the United States situated in the States of Utah, Idaho and Wyoming, upon none of which has any filing been made or entry made in any land office of the United States, and which constitute a part of its public domain. That there are 72,500 head of said sheep of the complainants which are of the reasonable value of about five dollars each, or a total of about \$350,000. That said sheep have been kept and grazed during the past winter on the desert in the States of Utah and Nevada, but chiefly in the county of Box Elder in the State of Utah, which county forms the north border line of the State of Idaho, where they are wholly dependent upon melting snow for water to drink. That said sheep are now on the border line of Utah and Idaho, where there is barely feed sufficient for their subsistence for a short time only. That if they are prevent-

ed by the defendants from passing therefrom through the State of Idaho, they will be forced to remain on said range and in the locality where they now are, where they will soon be wholly without food and water, and will die for the want of the same. That said plaintiffs have heretofore and for many years grazed their said and other sheep during the winter upon said desert in northwestern Utah, upon the said "public domain" of the United States; and during the balance of the year upon their own lands in the States of Idaho and Wyoming, and chiefly upon the wild, unclaimed, unoccupied lands or "public domain" of the United States, in the States of Idaho and Wyoming. That said plaintiffs are and for days last past have been endeavoring to drive said sheep upon and over the said "public domain" of the United States, into and through the States of Idaho and Wyoming, but have been prevented from so doing by the defendants, their agents, confederates and associates whose names are unknown to complainants except as stated above; but all of whom, as your orators are informed and believe, and therefore allege, are, or claim to be, citizens and residents of said State of Idaho.

That said desert is capable of, and does, and for many years has furnished grazing during the winter months only, for several hundred thousand sheep, all of which are solely dependent upon the snow for water to drink. That said desert lands are practically if not wholly unfit for any other use than that of grazing sheep. That said snow disappears about the middle of March of each year, the time varying slightly with the season, after which it is impossible to graze sheep on said desert for

want of water and verdure. And all of said sheep are then driven and grazed upon the said "public domain," in the mountains east and north of said desert. That sheep so grazed on said desert in northwestern Utah, and in particular the said sheep of complainants are grazed in the spring and summer upon said "public domain," in the States of Idaho and Wyoming. That the privileges of grazing sheep upon the said lands of the United States is of great value to said complainants, to wit, of the value of over \$2,000 to each of your orators exclusive of costs and interest, and indispensable for their said sheep at the present time. That said desert lands extend to the southern border line of Idaho where the said sheep are now waiting for the privilege of traveling over the said "public domain" to their lambing grounds and spring and summer range in the State of Idaho and Wyoming, and where they are so prevented from being driven and transported by the defendants. That about one-third of said sheep are also on their way to what is known as the Eastern Markets; namely, Omaha, Nebraska, St. Joe and Kansas City, Missouri, and Chicago, Illinois, where the said plaintiffs desire to sell the same for mutton. That said mutton sheep are now poor and unfit for the market and cannot be sold for mutton except at a great loss. That it is necessary for said sheep to be grazed on the spring grass growing on said "public domain," in the States of Idaho and Wyoming, to become fat and valuable and marketable mutton sheep. That said public domain over which they will travel through the States of Idaho and Wyoming, if not prevented by the defendants, furnishes the said

grass with which to fatten said sheep at a minimum cost. That if said sheep are not permitted to be grazed on their said accustomed range an irreparable loss will be sustained by said plaintiffs.

Third.—That said defendants have heretofore and do now threaten to prevent all of said sheep from coming into the State of Idaho, and they have heretofore and will, if not restrained by this Court from so doing, prevent these plaintiffs from driving or transporting said sheep or any of them into or through the State of Idaho, and will prevent said sheep from grazing and pasturing or traveling over the said “public domain” of the United States into the said State of Idaho, for the sole purpose of enabling said defendants, their associates, their agents and confederates to monopolize and exclusively use said range, and graze their own sheep and cattle upon said lands of the United States.

That the said defendants, their associates and confederates, and the many persons acting in aid of them, are now threatening to, and unless restrained by the order or the process of this Court will, in violation of law and the rights of their complainants with force and arms and against the will and potent of complainants, drive and run complainant’s sheep from the State of Idaho into the desert into the States of Utah and Nevada; which said acts will cause said complainants great and irreparable injury, and cause the loss of all their said ewe sheep and their lambs, and all, or nearly if not all, of said sheep by improperly driving and running said sheep and by forcing them into the said desert, where there is now no feed or water for the maintenance of said sheep.

And if said defendants are permitted to commit the said wrongs there will be a multiplicity of suits which can be avoided only by a court of equity in restraining the defendants in their said unlawful efforts and acts. That said defendants as your orators are informed and believe, and therefore allege, are financially irresponsible and will be wholly unable to respond in damages, and therefore there is no adequate remedy at law against them or either of them.

Your orators further show that the said defendants claim the right to do the aforesaid acts under and by virtue of a certain proclamation of the governor and act of the legislature of Idaho, of which Exhibits "A" and "B" are true copies, and are made a part hereof. The said Exhibit "A" is proclamation of the governor, and the said Exhibit "B" is the act of the legislature aforesaid.

That the said defendant, Thomas G. Lowe, is State Sheep Inspector for the State of Idaho, and that the other defendants are his deputies and other inspectors acting under his direction. That as such, they insist that the said act and proclamation authorize them to drive the sheep of each of your orators out of the State of Idaho and away from the public domain of the United States within the said State of Idaho. And your orators claim and allege that the said proclamation and act of the legislature taken together with the facts herein alleged, are illegal and unconstitutional in this, to wit, that they are contrary to that clause of the constitution of the United States, section eight, article one, which authorizes Congress to regulate commerce between the

States; that they are contrary to that clause of the constitution of the United States, section two, article four, which provides that the citizens of each State shall be entitled to the privileges and immunities of citizens of the several States; that they are contrary to section one, article fourteen, of the constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law or deny to any person with its jurisdiction the equal protection of the law.

That under and in pursuance of that statute and proclamation the said defendants threaten to drive across the line into the State of Utah the sheep of your orators, as often as your orators shall attempt to drive them upon the public lands of the United States in the State of Idaho, and threaten to bring suit against your orators separately and as often as your orators shall attempt to drive said sheep across the line from the State of Utah into the State of Idaho.

That your orators desire to keep said sheep upon the lands of the United States only, upon which they have a right of way and the privilege of grazing.

That your orators further show that each and all the sheep of each and all of said orators are free from the disease known as scab or scabbies, and are in all respects healthy sheep and not infected with any disease whatsoever.

Fourth.—That the Government of the United States, acting under due authority, for a long time last past has,

and does now, employ inspectors of sheep passing into and from said and other States, to thoroughly inspect all said sheep and to determine whether or not the same are infected with disease and particularly the disease known as scab or scabbie; and your complainants allege that said Government inspector is now inspecting all said sheep for the said purpose of determining whether said sheep are so infected. And your complainants allege that they have caused said sheep to be so inspected, and know that said sheep are free from said or any disease, and that said inspection by said Government inspectors now being made will further and also show that said sheep are free from any disease. That your orators further show to your Honors that said Government inspectors have just lately made an inspection of the range of places where said sheep have been kept and grazed for the past —— months, and have determined and so advised your orators that the said places are not infected with any disease and particularly scab or scabbie. That said defendants in making said arrests, and while driving and threatening to drive said sheep back onto the said desert in Utah, are pretending and assuming to act under the said proclamation of the governor of the State of Idaho, a copy of which is hereto attached and marked Exhibit "A." That the recital therein that sheep in said alleged infected districts are diseased is wholly false and untrue; in fact, and the said alleged information upon which said proclamation is based if such has been given, is entirely false and groundless and given to said governor solely for the purpose of enabling said defendants and their said associates and confederates to

have and enjoy a monopoly of the grazing lands of the said "public domain" of the United States for themselves. That the said sheep of the plaintiffs herein are free from scab and all other diseases, and the sheep in the said prohibited districts of Utah and Nevada, are also free from disease of all kinds. That sheep are also transported from said alleged infected and prohibited districts only during the said prohibited seasons and through the said prohibited counties of Utah. That the said proclamation of the governor of the State of Idaho is an arbitrary and unwarranted exercise of power and the alleged facts upon which it is claimed to be justified and based are wholly false. That the said proclamation, and the acts and threatened acts of said defendants, are an arbitrary assumption of power entirely unwarranted, unlawful and in violation of the constitutional rights of the plaintiffs.

Fifth.—That said sheep are mostly ewes heavy with lamb, and will commence to lamb about the 15th day of April, 1901. That said ewes to be successfully lambled must have proper care, lambing grounds and feed, which can only be obtained for them on the property of these plaintiffs in the State of Idaho, and upon the said "public domain" of the United States, in the State of Idaho. That it is impossible except at a great and unnecessary cost, for the plaintiffs to transport said sheep at the present season of the year into the State of Wyoming except through the State of Idaho. That said sheep can all be grazed and lambled upon said unoccupied "public domain" of the United States in the State of Idaho, and be transported over said lands from the locality where

they now are to the State of Wyoming, at a minimum expense. That if said defendants are permitted to drive said sheep of the plaintiffs back from the State of Idaho, as they threaten to and will do if not so as aforesaid restrained, said ewe sheep will be made to prematurely lamb and die, and all said sheep and their lambs will be destroyed and lost for the want of food and water, and proper care and attention, and these complainants will be thereby irreparably damaged in the sum of about \$350,000, or five dollars per head for each of their said sheep.

Sixth.—That said defendants threaten to, and will if not prohibited by this Court, confiscate and appropriate to their own use by force, the said sheep of the plaintiffs. That said defendants allege that they will use an army of the citizens of the State of Idaho to force and drive said sheep out of the State into the State of Utah; and that they will with force take their own use so many of said sheep so entering the State of Idaho as will fully compensate themselves and those so aiding them for their time and service without trial or any process of law whatever, if any of said sheep remain alive after having been so driven back as aforesaid and abused by the defendants.

Seventh.—That the said “public domain” of the United States in the State of Idaho is a natural and most desirable range for sheep, and over which the sheep from the said desert in Utah, and Nevada can be driven and transported to the eastern markets and summer range. That said unoccupied public lands of the United States in the mountains of Idaho, Northern Utah and Wyoming,

are a natural summer range for sheep, providing them with abundant grass and herbs for food, fresh, healthful water to drink, and fresh, cool air in the heat of summer; said mountain range is also essential for the fattening of said sheep for the market, and without it about one-third of the sheep which are as aforesaid intended for the eastern markets would be unsalable. That said defendants threaten to and will, if not restrained by this Court, wholly prevent the complainants from entering upon said range with their said sheep.

To the end that your orators may obtain the relief to which they are justly entitled in the premises they now pray your Honors to grant them due process by subpoena directed to said Thomas G. Lowe, John R. Thomas, David W. Jones, D. H. Anderson, John Doe and Richard Roe, defendants, hereinbefore named, requiring and commanding them and all persons acting under their direction or in aid of them, and each of them, to appear herein and answer but not under oath the same being expressly waived, the several allegations in this your orator's bill contained.

And your orators further pray that your Honors decree that the complainants, and each and all of them, have the right to drive their sheep upon the public domain of the United States, in and within the State of Idaho, and that the defendants, and each and all of them, be restrained from interfering or meddling with the sheep of your orators, and from intermeddling with any of them or driving them from the range of the United States.

And your orators further pray that your Honors grant unto your orators your writ of injunction commanding said defendants and all persons claiming to act under their authority, direction or control or in aid of them or any of them, to absolutely desist and refrain from in any way preventing the said complainants from driving and grazing their said sheep over and upon the unclaimed and unoccupied Government lands of the United States in the State of Idaho, or from in any way interfering with their herders while so engaged in driving and grazing said sheep on said public domain of the United States, until such time as your Honors shall appoint and direct and order herein; and that upon such hearing the writ herein prayed for be made and confirmed until the final determination of this suit and that thereupon the said injunction be made perpetual. And further pray for such other and further relief as may be just and equitable.

May it please your Honors, the premises being considered, to grant unto your orators a writ of injunction, issuing out of and under the seal of this Honorable Court, enjoining and restraining the said Thomas G. Lowe, John R. Thomas, David W. Jones, D. H. Anderson, John Doe and Richard Roe, their agents, solicitors, employees, confederates, and associates from in any manner driving disturbing or interfering with the sheep of your orators, and each of them, and from in any manner preventing any of the said sheep from grazing upon the public lands of the United States within the State of Idaho.

May it please your Honors to grant unto your orators, not only the writ of injunction conformable to the bill, but also a writ of subpoena, directed to the said Thomas G. Lowe, John R. Thomas, David W. Jones, D. H. Anderson, John Doe and Richard Roe, commanding them on a day certain, therein to be named, to be and appear in this Honorable Court, then and there to answer to the premises, and to stand to and abide and perform such further order and direction and decree as may be made against them and each of them.

And your orators will ever pray, etc.

JAMES H. MOYLE,
L. R. ROGERS,
ARTHUR BROWN,

Solicitors for Complainant and of Counsel.

United States of America, }
District of Utah, } ss.
City and County of Salt Lake. }

Jesse M. Smith, being duly sworn, deposes and says that he is one of the complainants in the within entitled action; that he has read the above and foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief and as to those matters, that he believes it to be true.

JESSE M. SMITH.

Subscribed and sworn to before me this 18th day of March, A. D. 1901.

[Seal]

ADAM A. DUNCAN,
Notary Public.

Exhibit "A."

QUARANTINE PROCLAMATION.

Governor Hunt Schedules Certain Localities on Account
of Scabs.

State of Idaho, Executive Office.

Whereas, under the provisions of the act of the legislature of the State of Idaho, entitled "An act establishing quarantine against diseased sheep, prescribing the duties of the governor and State sheep inspector in relation thereto, and providing penalties for the infraction of its provisions," it is made my duty, whenever I shall have good reason to believe that scab, or any other infectious disease of sheep has become epidemic in certain localities in any other State or territory, or that conditions exist that render sheep likely to convey disease, that I shall thereupon, by proclamation, designate such localities, and prohibit the importation of sheep from such localities, except under such restrictions as I, after consultation with the State sheep inspector, may deem proper; and,

Whereas, I have received statements from reliable wool growers and stock raisers of the State of Idaho, and have also received an official report from the State sheep inspector, based upon personal examination, as well as affidavits of responsible citizens of this State, to the effect that the disease known as scab or scabbies is epidemic among sheep in certain localities and districts, to wit, in the counties of Rich, Cache and Box Elder in the State of Utah, in the county of Uintah in the State of Wyoming, and the county of Elko in the State of Nevada; and,

Whereas, from such statements, reports and affidavits, I have reason to believe that the disease known as scab or scabbies has become epidemic among sheep in said above-stated localities or districts; and,

Whereas, it is known that sheep from said districts are being moved, driven and imported into the State of Idaho, and that such sheep from said districts, if moved, driven or brought into this state, will thereby spread infection and disease on the ranges and among the sheep of this State, which act would result in great disaster:

Now, therefore, I, Frank W. Hunt, Governor of the State of Idaho, by virtue of authority in me vested, and after due consultation with the State sheep inspector, do hereby prohibit the importation, driving or moving into the State of Idaho, of all or any sheep now being held, herded or ranged within said infected districts, or that may be driven through said district, viz., the counties of Rich, Cache and Box Elder in the State of Utah, the county of Uintah in the State of Wyoming, and the county of Elko in the State of Nevada, or which may hereafter be held, herded or ranged within, or driven through, said infected districts, for a period of 40 days from and after the date of this proclamation. After the termination of said 40 days, sheep from said infected districts may be moved into this State only upon compliance with the terms of the act of the legislature of the State of Idaho, entitled "An act to suppress contagious and infectious diseases of sheep, to create the office of sheep inspector, etc." Approved March 6th, 1901.

That any sheep imported into this State from the said infected districts, over any railway, and which are unloaded at any point in this State for the purpose of feeding or grazing upon the ranges within this State, shall be held and quarantined within two miles of the point where unloaded for a period of 15 days. And at the expiration of said 15 days, said sheep shall be inspected by the State sheep inspector, or his deputies, and if found free from disease may be allowed to graze upon the ranges, or if said inspection shall show that said sheep are diseased, before they shall be allowed to travel over or graze upon the ranges, they shall be held and dipped, as provided in the act of the legislature of the State of Idaho, entitled "An act to suppress contagious and infectious diseases of sheep, etc." Approved March 6th, 1901, until said sheep are cured of all disease.

That the quarantine proclamation heretofore issued by me, on the 11th day of February, 1901, is hereby revoked.

In witness whereof, I have hereunto set my hand and caused to be affixed the great seal of the State.

Done at Boise, the capital, this 9th day of March, in the year of our Lord one thousand nine hundred and one.

By the Governor:

FRANK W. HUNT.

CHARLES J. BASSETT,

Sec. of St.

Exhibit "B."

Legislature of the State of Idaho. Sixth Session.

S. B. No. 63.

(As Amended.)

In the Senate.

By Jones—By request.

An Act Establishing Quarantine Against Diseased Sheep, Prescribing the Duties of the Governor and State Sheep Inspector in Relation Thereto, and Providing Penalties for the Infraction of Its Provisions.

Be it Enacted by the Legislature of the State of Idaho:

Section 1. Whenever the Governor of the State of Idaho has reasons to believe that scab or any other infectious disease of sheep has become epidemic in certain localities in any other State or territory, or that conditions exist that render sheep likely to convey disease, he must thereupon by proclamation, designate such localities and prohibit the importation from them of any sheep into the State, except under such restrictions as, after consultation with the State sheep inspector, he may deem proper.

Any person or corporation, who, after publication of such proclamation, receives in charge any such sheep from any of the prohibited districts and transports, conveys or drives the same to and within the limits of any of the counties of this State, is punishable by a fine not exceeding one thousand (\$1,000) dollars, nor less than two hundred (\$200) dollars, and is liable for all damages that may be sustained by any person by reason of the importation of such prohibited sheep.

Section 2. Whenever the proclamation of the governor, issued as hereinbefore provided shall prohibit the

driving or importation of sheep into this State from another State or territory, or subdivisions thereof, it shall be the duty of the State sheep inspector, or any of deputies, to drive or transport said sheep so coming into this State in violation of said proclamation back across the State line from which they came, using all necessary force in so doing; provided, that the State sheep inspector or his deputies may employ such assistance as may be necessary for the enforcement of the provisions of this act; and the costs of such deportation shall be a lien upon said sheep; provided, that if the fine and costs in this act provided shall not be immediately paid the deputy sheep inspector shall retain a sufficient number of said sheep to pay such fine and costs, which sheep shall be sold to pay the same, by the deputy sheep inspector, in the same manner as provided by law for the sale of personal property to satisfy a judgment, and for such services the deputy sheep inspector shall receive and retain such fees as is allowed sheriffs for like services to be taxed as costs.

Section 3. Any person failing or refusing to assist such deputy sheep inspector, as in the preceding section provided, shall be punished as in section 6517 of the Revised Statutes of Idaho (1887) made and provided.

Section 4. Whereas an emergency exists therefor, this act shall be in force and effect from and after its passage and approval.

[Endorsed]: No. 68. United States Circuit Court, District of Idaho. Jesse M. Smith et al., vs. Thomas G. Lowe, et al. Complaint. Filed March 21, 1901. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, in and for the
District of Idaho.*

JESSE M. SMITH, EPHRIAM P.
ELLISON, ELIAS ADAMS, JOHN
W. THORNLEY, JAMES W. CHIP-
MAN, JAMES LOVE, ANTHON J.
NIELSON, BENJAMIN R. MEEK,
PETER A. NEILSON, JOSEPH S.
NEILSON, HANS S. NEILSON,
HEBER A. SMITH, ANDREW AL-
LEN, ELLSWORTH ALLEN, RILEY
ALLEN, ISAAC DUNTON, AUREL-
IUS FITZGERALD, ISAAC FITZ-
GERALD, HENRY CHIPMAN, BEN
JAMIN DANSIE, THOMAS MER-
CER, WILLIAM AYLETT, HEBER
AYLETT, JOHN A. EGBERT,
GEORGE DANSIE, FRANK DAN-
SIE, WILLIAM CRANE, I. J. FREE-
MAN, JOSEPH R. OLSEN, L.
PARKER,

Complainants,

vs.

THOMAS G. LOWE, JOHN R.
THOMAS, DAVID W. JONES, D. H.
ANDERSON, JOHN DOE, RICH-
ARD ROE, Whose Other or True
Names are Unknown,

Defendants.

Praecipe for Appearance of Defendants.

To the Clerk of the Above-entitled Court.

You will please enter our appearance as solicitors for
all the defendants in the above-entitled cause, excepting
John Doe and Richard Roe.

Dated March 21, 1901.

FRANK MARTIN.

[Endorsed]: No. 68. United States Circuit Court, Southern Division, District of Idaho. Jesse M. Smith et al. vs. Thomas G. Lowe et al. Appearance of Defendants. Filed March 21, 1901. A. L. Richardson, Clerk,

In the Circuit Court of the United States, in and for the District of Idaho.

JESSE M. SMITH, EPHRIAM P. ELLISON, ELIAS ADAMS, JOHN W. THORNLEY, JAMES W. CHIPMAN, JAMES LOVE, ANTHON J. NIELSON, BENJAMIN R. MEEK, PETER A. NEILSON, HEBER A. SMITH, ANDREW ALLEN, ISAAC DUNTON, AURELIUS FITZGERALD, ISAAC FITZGERALD, HENRY CHIPMAN, BENJAMIN DANSIE, THOMAS MERCER, FRANK DANSIE, WILLIAM CRANE, I. J. FREEMAN, JOSEPH R. OLSEN, L. PARKER,

Complainants,

vs.

THOMAS G. LOWE, JOHN R. THOMAS, DAVID W. JONES, D. H. ANDERSON, JOHN DOE, and RICHARD ROE, Whose Other or True Names are Unknown,

Defendants.

Demurrer.

The demurrer of Thomas G. Lowe, John R. Thomas, David W. Jones and D. H. Anderson, the above-named

defendants, to the bill of complaint of the above-named complainants.

I.

These defendants, by protestation, not confessing or acknowledging all, or any, of the matters or things, in the said bill of complaint contained, to be true, in such manner and form as the same are herein set forth and alleged, jointly demur to the said bill, and for causes of demurrer show:

II.

That it appears from said bill of complaint of complainants that this Court has no jurisdiction to hear and determine this action.

III.

That it does not appear that the decision of the cause will necessarily turn upon the construction of the constitution of the United States or any law or statute of the United States.

IV.

That the said complainants have not in or by said bill made or stated such a cause as does or ought to entitle them to the relief thereby sought or prayed for, from or against these defendants or either of them.

V.

That said bill of complaint of complainants is wholly without equity.

Wherefore and for divers other good causes of demurrer appearing on the said bill, these defendants demur thereto, and they pray the judgment of this Honorable Court whether they shall be compelled to make

further, or any answer to the said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

FRANK MARTIN,
Solicitor and Counsel for Defendants.

State of Idaho, {
County of Ada. { ss.

Thomas G. Lowe, one of the above-named defendants, makes oath and says, that he is one of the above-named defendants, and that the foregoing demurrer is not interposed for delay.

THOMAS G. LOWE.

Subscribed and sworn to before me this 28th day of March, 1901.

[Seal]

HUGH E. McELROY,
Notary Public.

I hereby certify that, in my opinion, the foregoing demurrer is well-founded in point of law.

FRANK MARTIN,
Of Counsel for Defendants.

[Endorsed]: No. 68. United States Circuit Court, Southern Division, District of Idaho. Jesse M. Smith et al., vs. Thos. G. Lowe et al. Demurrer. Filed March 28th, 1901. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, for the District of
Idaho.*

JESSE M. SMITH et al.,	}
Complainants,	
vs.	}
THOMAS G. LOWE et al.,	
Defendants.	}

Opinion.

In this action complainants show by their complaint that their sheep have been wintered in the States of Nevada and Utah; that they are now upon the border of Idaho en route to places within said State where they have before summered; that they are practically without food or water; that defendants are preventing their admission into the State, and that there is great danger of their injury and loss, and that defendants justify their acts by reason of a law of the State and the governor's proclamation in pursuance thereof. Complainants claim that the State law is in violation of the provisions of the constitution of the United States. To the complaint defendants have demurred.

The State law provides that whenever the governor shall have reason to believe any infectious disease of sheep has become epidemic in localities outside of the State of Idaho, he must, by his proclamation, designate such localities and prohibit sheep therein from entering the State, "except under such restriction, as after

consultation with the State sheep inspector, he may deem proper." In pursuance of this law the governor of this State, on the 9th day of March, 1901, issued his proclamation prohibiting, for the period of forty days, any sheep from the districts therein named as infected, from entering the State. The complainants' sheep were among those affected by this proclamation.

That the citizens of any State in this Government have the right to drive their sheep into this State will not be questioned. That right is as well defined and stable as the existence of the Government itself, for both rest upon the constitution. It is also well settled that States in the exercise of their police power and for the protection of their citizens, may enact and enforce laws to exclude from their borders diseased sheep or other diseased animals. Also, it is true, that when those laws are made as quarantine regulations, but for the real purpose of excluding the property of citizens of other States regardless of their health condition, they are as much unconstitutional as if openly and directly prohibiting the admission of livestock regardless of condition.

The important question here is, who shall determine when the State law and its enforcement, are made in good faith for the exclusion of diseased animals. Shall that be left to the State authorities alone, or may this Court investigate and determine the facts? If left exclusively to the State authorities, if they are disposed to be partial, the law might be so enforced as to make the admission of sheep into the State a matter of so much hardship, as to amount to their practical exclusion. In this case the proclamation prohibited "the importation,

driving or moving into the State of Idaho" of the sheep in question for the period of forty days, from the 9th day of March, 1901, the date of the proclamation. These sheep were then upon the border of the State, and as alleged, nearly without food; to hold them for that length of time would at least be a very great hardship, if it would not have operated to compel the complainants to drive their flocks to some other less hostile locality.

Upon the application for a temporary restraining order against defendants, an investigation was had by affidavit and by the oral evidence of witnesses had in court, which indicated that the sheep were not diseased, and it was also shown by the chief witnesses, upon both sides, that sheep having the disease of scab, which it was claimed existed in this case, could be so far cured as to render their passage through the country safe from the spread of the disease, by two dippings ten days apart. To avoid the admission of any diseased sheep, the Court sent the chief State sheep inspector and the United States Government inspector, Messrs. Lowe and McBirney, to personally inspect the sheep, and if found free from disease to admit them without further delay. The result of their inspection was that the sheep were found practically free from disease, and they were admitted. The simple facts in this case are, that the sheep were not so diseased as to justify their exclusion. To have excluded them, or to have even incumbered their admission by unnecessary regulations, would not only be a mistake, but also the denial of the sacred right which every citi-

zen of this Government has, of transporting his property wherever he will regardless of State lines.

Since the commencement of this action and the hearing had therein, two decisions have been announced by the Supreme Court of the United States, which, as they are understood, this Court will follow. (*Rasmussen vs. Idaho*, 181 U. S. 198, and *Smith vs. St. Louis & Southwestern Railroad Co.*, Id. 248.) The latter involved certain livestock quarantine regulations of the State of Texas. The governor's proclamation prohibited the transportation from the State of Louisiana into Texas of certain livestock between June 5th and the following November 15th. The Court, while sustaining the law and the proclamation of the governor in enforcing it, says that "To what extent the police power of a State may be exerted on traffic and intercourse with the State, without conflicting with the commerce clause of the constitution of the United States has not been precisely defined." It reviews its past decisions upon the subject, including the well-known case of *Railroad Co. vs. Husen*, 95 U. S. 465, from which the conclusion is reached that any law which excludes all of a class of property, regardless of its condition, is unconstitutional; that police regulations to exclude diseased stock or unhealthy food are valid, and that any laws or regulations "burdened with such conditions as would wholly prevent the introduction of sound articles from other States" are void. Also, "It depends upon whether the police power of a State has been exerted beyond its province—exerted to regulate interstate commerce—exerted to exclude, with-

out discrimination, the good and the bad, the healthy and the diseased, and to an extent *beyond what is necessary for any proper quarantine*. The words in italics express an important qualification. The prevention of disease is the essence of a quarantine law. Such law is directed not only to the actually diseased, but to what has been exposed to disease. * * * * Under the guise of either (a proper quarantine or inspection law), a regulation of commerce will not be permitted. Any pretense or masquerade will be disregarded, and the true purpose of a statute ascertained. * * * * It is the character of the circumstances which gives or takes from a law, or regulation of quarantine a legal quality." These last clauses would indicate that the action of the State officers and the circumstances surrounding a given case may be inquired into, and there is nothing to indicate that a United States Court has not such authority. Force is added to this by the further statement of the Court that "We are not now put to any inquiry of that kind. The good faith and sincerity of the Texas officers cannot be doubted, and the statutes under which they acted cannot be justifiably complained of." In this Texas case all the cattle from a certain district in Louisiana, said to be affected with disease, were excluded from Texas for a period of one hundred and sixty-three days. In this case the law is no more stringent than the Texas statute, and the exclusion is for but forty days. The difference in the cases being, that in the Texas case the cattle were shipped from Louisiana long after the governor's proclamation, while in this case the sheep were en route for their pas-

ture lands, and upon the borders of this State, practically without food, when the proclamation was issued.

In the Rasmussen case ante, under a similar quarantine sheep law, the governor on April 12th, 1899, issued his proclamation prohibiting Utah and Nevada sheep from entering within this State, for the period of sixty days thereafter. The Court says of the law that it "is not a continuous act, operating year after year irrespective of any examination as to the actual facts, but is one contemplating in every case investigation by the chief executive of the State, before any order of restraint is issued. Whether such restraint shall be total or limited, and for what length of time, are matters to be considered by him upon full consideration of the condition of the sheep in the localities supposed to be affected. The statute was an act of the State of Idaho, contemplating solely the protection of its own sheep from the introduction among them of any infectious disease, and providing for only such restraints upon the introduction of sheep from other States, as in the judgment of the State was absolutely necessary to prevent the spread of disease." These decisions do not say that a Federal Court may not, in such cases, entertain jurisdiction for the purpose of determining the good faith both of the law and its enforcement, and while in the one case it is said that such a law cannot be made a mask to shield a violation of the interstate commerce constitutional provision, in both there is an intimation that when the law upon its face is one to prevent the spread of disease in the State, the State officers may be relied upon to, in

good faith, enforce it in justice to all. At any rate, in the two cases above examined, the laws and their enforcement by the State officers were sustained, and such laws and such enforcement thereof were as strong in exclusion of foreign stock as is the law in the case under consideration. It must follow therefore, that this law may be enforced by the State officers; that the complaint does not state a cause of action of which this Court may take jurisdiction, and the demurrer thereto is sustained.

Dated at Boise, Idaho, October 24, 1901.

BEATTY,

Judge.

[Endorsed]: No. 68. United States Circuit Court, District of Idaho. Jesse M. Smith et al. vs. Thomas G. Lowe et al. Opinion. Filed October 24, 1901. A. L. Richardson, Clerk,

*In the Circuit Court of the United States, for the Southern
Division of the District of Idaho.*

JESSE M. SMITH et al.

vs.

THOMAS G. LOWE et al.

}
}
}

Order Sustaining Demurrer.

On this day was announced the decision of the Court upon the demurrer to the complaint herein, heretofore argued and submitted. Ordered that said demurrer be, and the same is hereby, sustained.

In the absence of counsel for plaintiff, an exception is hereby allowed to the above ruling.

Dated Boise, Idaho, October 24, 1901.

JAS. H. BEATTY,

Judge.

[Endorsed]: No. 68. United States Circuit Court, Southern Division, District of Idaho. Jesse M. Smith et al. vs. Thomas G. Lowe et al. Order Sustaining Demurrer. Filed October 24, 1901. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, for the Southern
District of Idaho.*

JESSE M. SMITH, EPHRIAM EL-
LISON, ELIAS ADAMS, JOHN
W. THORNLEY, JAMES W. CHIP-
MAN, JAMES LOWE, ANTHONY J.
NIELSON, BENJAMIN R. MEEK,
PETER A. NEILSON, HEBER A.
SMITH, ANDREW ALLEN, ISAAC
DUNTON, AURELIIOUS FITZGER-
ALD, ISAAC FITZGERALD,
HENRY CHIPMAN, BENJAMIN
DANSIE, THOMAS MERCER,
FRANK DANSIE, WILLIAM
CRANE, I. J. FREEMAN, JOSEPH
R. OLESON, L. PARKER,

Plaintiffs,

vs.

THOMAS G. LOWE, JOHN R.
THOMAS, DAVID W. JONES, D. H.
ANDERSON, JOHN DOE, and RICH-
ARD ROE, Whose Other and True
Names are Unknown,

Decree.

This cause came on to be heard in regular term of this court on the 7th day of October, 1901, upon the bill of complaint of complainants and the demurrer of the de-

defendants thereto, and was argued by counsel and thereupon upon consideration by the Court, this Court, by decision given in writing on the 24th day of October, 1901, held that the bill of complaint of complainants did not state a cause of action of which this Court might take jurisdiction and the demurrer of defendants thereto was sustained, and it was ordered by this Court that this cause be dismissed.

Therefore, it is ordered, adjudged, and decreed that complainant's bill do stand dismissed out of this court, and that defendants have and receive of complainants herein their costs in this cause paid for the services of the officials of this court, amounting to the sum of \$31.40.

Dated at Boise, Idaho, this 24th day of October, 1901.

JAS. H. BEATTY,

Judge.

[Endorsed]: No. 68. United States Circuit Court, District of Southern Idaho. Jesse M. Smith et al., Plaintiffs, vs. Thomas G. Lowe et al., Defendants. Decree. Filed October 24th, 1901. A. L. Richardson, Clerk.

In the Circuit Court of the United States, in and for the District of Idaho.

JESSE M. SMITH, EPHRIAM P. ELLISON, ELIAS ADAMS, JOHN W. THORNLEY, JAMES W. CHIPMAN, JAMES LOVE, ANTHON J. NEILSON, BENJAMIN R. MEEK, PETER A. NEILSON, JOSEPH S. NEILSON, HANS S. NEILSON, HEBER A. SMITH, ANDREW ALLEN, ELLSWORTH ALLEN, RILEY ALLEN, ISAAC DUNYON, AURELIUS FITZGERALD, ISAAC FITZGERALD, HENRY CHIPMAN, BENJAMIN DANSIE, THOMAS MERCER, WILLIAM AYLETT, HEBER AYLETT, JOHN A. EGBERT, GEORGE DANSIE, FRANK DANSIE, WILLIAM CRANE, I. J. FREEMAN, JOSEPH R. OLSEN, L. PARKER,

Complainants,

vs.

THOMAS G. LOWE, JOHN R. THOMAS, DAVID W. JONES, D. H. ANDERSON, JOHN DOE, RICHARD ROE, Whose Other or True Names are Unknown,

Defendants.

Petition for Appeal and Order Allowing Same.

The above-named plaintiffs, conceiving themselves aggrieved by the order and decree entered herein on Octo-

ber 24th, 1901, in the above-entitled proceedings, sustaining the defendants' demurrer and dismissing the plaintiffs' bill in equity filed herein, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that their appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the said Ninth Circuit.

JAMES H. MOYLE,

LINDSEY R. ROGERS,

ARTHUR BROWN,

Attorneys for Plaintiffs and Appellants, Salt Lake City,
Utah.

Boise City, State of Idaho, April 8, 1902.

And now, to wit, on April 8, 1902, it is ordered that the appeal be allowed as prayed for.

JAS. H. BEATTY,

Judge.

[Endorsed]: No. 68. United States Circuit Court, Southern Division, District of Idaho. Jesse M. Smith et al. vs. Thomas G. Lowe et al. Petition for Appeal. Filed April 8th, 1902. A. L. Richardson, Clerk.

In the Circuit Court of the United States, in and for the District of Idaho.

JESSE M. SMITH, EPHRIAM P. ELLISON, ELIAS ADAMS, JOHN W. THORNLEY, JAMES W. CHIPMAN, JAMES LOVE, ANTHON J. NEILSON, BENJAMIN R. MEEK, PETER A. NEILSON, JOSEPH S. NEILSON, HANS S. NEILSON, HEBER A. SMITH, ANDREW ALLEN, ELLSWORTH ALLEN, RILEY ALLEN, ISAAC DUNYON, AURELIUS FITZGERALD, ISAAC FITZGERALD, HENRY CHIPMAN, BENJAMIN DANSIE, THOMAS MERCER, WILLIAM AYLETT, HEBER AYLETT, JOHN A. EGBERT, GEORGE DANSIE, FRANK DANSIE, WILLIAM CRANE, I. J. FREEMAN, JOSEPH R. OLSEN, L. PARKER,

Complainants,

vs.

THOMAS G. LOWE, JOHN R. THOMAS, DAVID W. JONES, D. H. ANDERSON, JOHN DOE, and RICHARD ROE, Whose Other or True Names are Unknown,

Defendants.

Assignment of Errors.

And now, on the 8th day of April, 1902, comes the said plaintiffs, by their attorneys, James H. Moyle, Brown &

Henderson and L. R. Rogers, and say, that the order and decree in said cause sustaining the demurrer of the defendants to the plaintiffs' bill in equity filed herein, and dismissing said bill, is manifestly erroneous and against the just rights of the said plaintiffs in this, to wit:

1. That the Court erred in sustaining the said demurrer interposed to the plaintiffs' said bill in equity.

2. That the Court erred in dismissing the plaintiffs' said bill and refusing to grant the plaintiffs the relief prayed for in said bill.

Wherefore, said plaintiffs and appellants pray that said order and decree be reversed, and that appellants be restored to all things which they have lost by reason of said order and decree.

JAMES H. MOYLE,
LINDSEY B. ROGERS,
ARTHUR BROWN,

Attorneys for Plaintiffs in Error.

[Endorsed]: No. 68. United States Circuit Court, Southern Division, District of Idaho. Jesse M. Smith et al., vs. Thomas G. Lowe et al. Assignment of Errors. Filed April 8th, 1902. A. L. Richardson, Clerk.

In the Circuit Court of the United States, in and for the District of Idaho.

JESSE M. SMITH, EPHRIAM P. ELLISON, ELIAS ADAMS, JOHN W. THORNLEY, JAMES W. CHIPMAN, JAMES LOVE, ANTHON J. NEILSON, BENJAMIN R. MEEK, PETER A. NEILSON, JOSEPH S. NEILSON, HANS S. NEILSON, HEBER A. SMITH, ANDREW ALLEN, ELLSWORTH ALLEN, RILEY ALLEN, ISAAC DUNYON, AURELIUS FITZGERALD, ISAAC FITZGERALD, HENRY CHIPMAN, BENJAMIN DANSIE, THOMAS MERCER, WILLIAM AYLETT, HEBER AYLETT, JOHN A. EGBERT, GEORGE DANSIE, FRANK DANSIE, WILLIAM CRANE, I. J. FREEMAN, JOSEPH R. OLSEN, L. PARKER,

Complainants,

vs.

THOMAS G. LOWE, JOHN R. THOMAS, DAVID W. JONES, D. H. ANDERSON, JOHN DOE, and RICHARD ROE, Whose Other or True Names are Unknown,

Defendants.

Bond on Appeal.

Know all men by these presents, that we, Fidelity and Deposit Company of Maryland, are held and firmly

bound unto the above-named defendants, Thomas G. Lowe, John R. Thomas, David W. Jones, D. H. Anderson, John Doe and Richard Roe, whose other or true names are unknown, in the sum of five hundred dollars, to be paid to the said defendants, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 28th day of March, in the year of our Lord, one thousand nine hundred and two.

Whereas, the above-named plaintiffs, Jesse M. Smith, Ephriam P. Ellison, Elias Adams, John W. Thornley, James W. Chipman, James Love, Anthon J. Neilson, Benjamin R. Meek, Peter A. Neilson, Joseph S. Neilson, Hans S. Neilson, Heber A. Smith, Andrew Allen, Ellsworth Allen, Riley Allen, Isaac Dunyon, Aurelius Fitzgerald, Isaac Fitzgerald, Henry Chipman, Benjamin Dansie, Thomas Mercèr, William Aylett, Heber Aylett, John A. Egbert, George Dansie, Frank Dansie, William Crane, I. J. Freeman, Joseph R. Olsen, L. Parker, have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the order and decree rendered in the above-entitled suit, by the Judge of the United States Circuit Court for the District of Idaho:

Now, therefore, the condition of this obligation is such, that if the above-named Jesse M. Smith, Ephriam P. Ellison, Elias Adams, John W. Thornley, James W. Chipman, James Love, Anthon J. Neilson, Benjamin R.

Meek, Peter A. Neilson, Joseph S. Neilson, Hans S. Neilson, Heber A. Smith, Andrew Allen, Ellsworth Allen, Riley Allen, Isaac Dunyon, Aurelius Fitzgerald, Isaac Fitzgerald, Henry Chipman, John A. Egbert, George Dansie, Frank Dansie, William Crane, I. J. Freeman, Joseph R. Olsen, L. Parker shall prosecute said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

In witness whereof, we have hereunto set our hands, this 28th day of March, A. D. 1902.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND.

[Seal]

By CHAS. A. CLARK,

Its Attorney in Fact and Member of Local Board.

Attested and sealed:

By SHERMAN G. KING,

General Agent for State of Idaho, Residing at Boise City,

Signed, sealed and delivered, this 28th day of March, A. D. 1902.

Approved by:

JAS. H. BEATTY,

Judge.

State of Utah, } }
County of Salt Lake. } } ss.

_____ and _____
sureties on the foregoing bond, being duly sworn, each for himself, deposes and says that he is worth, after pay-

ing his just debts, the sum of \$500.00, exclusive of the property exempt from execution by the laws of the State in which he resides.

Subscribed and sworn to before me by the above-named sureties, this _____ day of March, 1902.

Notary Public in and for Salt Lake County, State of Utah.

COPY OF RESOLUTIONS AUTHORIZING THE EXECUTION OF CERTAIN SURETY BONDS FOR THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND, IN THE STATE OF IDAHO.

At a regular meeting of the Board of Directors of the Fidelity and Deposit Company of Maryland, held at the office of the Company in Baltimore, Maryland, on the first day of November, 1899, the following resolutions were unanimously adopted, to wit:

Whereas, the Fidelity and Deposit Company of Maryland has been authorized by the Insurance Department of the State of Idaho, to transact the surety business therein; and

Whereas, it is often necessary, in order to facilitate the business of the company in said State, to have bonds in certain cases executed upon application for same; therefore, be it

Resolved, that Alfred Eoff, Nathan Falk, B. S. Howe, H. C. Wyman or Charles A. Clark, all of the city of Boise, State of Idaho, be, and either of them is hereby, authorized to execute and deliver, for and on behalf of the said Fidelity and Deposit Company of Maryland, all bonds required in judicial proceedings in any and all Courts in said State of Idaho and in the United States Circuit and District Courts in said State, to wit, bonds for executors, administrators, trustees, receivers, assignees, guardians, committees for lunatics, in replevin cases, attachment cases, injunction cases, appeal cases, bonds for security for costs, and any and all other bonds required to be given by order or decree of any court of law or equity, of the State of Idaho or the United States Circuit and District Courts for said State; the same to be attested by Sherman G. King, who shall attach the seal of said company to the undertaking or bond so executed. And any such bond, so executed, shall be binding upon the said Fidelity and Deposit Company of Maryland, to all intents and purposes, as fully as if done by the regular officers of the company in their own proper persons in its behalf.

We, _____, President, and H. E. Bosler Secretary of the Fidelity and Deposit Company of Maryland, hereby certify that the foregoing is a true copy taken from the records of proceedings of the Board of Directors of the Fidelity and Deposit Company of Maryland.

In testimony whereof, we have hereunto subscribed our names as President, and Secretary, respectfully, and affixed the corporate seal of the Fidelity and Deposit

Company of Maryland, this first day of November, A. D. 1899.

_____,
President.
H. E. BOSLER,
Secretary.

[Seal]

State of Maryland, }
City of Baltimore. } ss.

On this 1st day of Nov. A. D. 1899, before the subscriber, a notary public of the State of Maryland, in and for the city of Baltimore, duly commissioned and qualified came _____, President, and H. E. Bosler, Secretary of the Fidelity and Deposit Company of Maryland, to me personally known to be the individuals and officers described in, and who executed the preceeding instrument, and they each acknowledge the execution of same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the company aforesaid, and that the seal affixed to the preceeding instrument is the corporate seal of said company, and that the said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal at the city of Baltimore, the day and year first above written.

[Seal]

FRED S. AXTELL,
Notary Public.

[Endorsed]: No. 68. United States Circuit Court, Southern Division, District of Idaho. Jesse M. Smith et al. vs. Thomas G. Lowe et al. Appeal Bond. Filed April 8, 1902. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, in and for the
District of Idaho.*

JESSE M. SMITH, EPHRIAM P. ELLI
SON, ELIAS ADAMS, JOHN W.
THORNLEY, JAMES W. CHIPMAN,
JAMES LOVE, ANTHON J. NEIL-
SON, BENJAMIN R. MEEK, PETER
A. NEILSON, JOSEPH S. NEIL-
SON, HANS S. NEILSON, HEBER
A. SMITH, ANDREW ALLEN,
ELLSWORTH ALLEN, RILEY AL-
LEN, ISAAC DUNYON, AURELIUS
FITZGERALD, ISAAC FITZGER-
ALD, HENRY CHIPMAN, BENJA-
MIN DANSIE, THOMAS MERCER,
WILLIAM AYLETT, HEBER AY-
LETT, JOHN A. EGBERT, GEORGE
DANSIE, FRANK DANSIE, WILL-
IAM CRANE, I. J. FREEMAN, JO-
SEPH R. OLSEN, L. PARKER,
Complainants,

vs.

THOMAS G. LOWE, JOHN R. THOM-
AS, DAVID W. JONES, D. H. AN-
DERSON, JOHN DOE, and RICH-
ARD ROE, Whose Other or True
Names are Unknown,
Defendants.

Order Allowing Appeal.

This 8th day of April, 1902, came the plaintiffs, by their

attorneys, and filed herein and presented to the court their petition, praying for the allowance of an appeal intended to be urged by them, praying also that the transcript of the record, proceedings and papers upon which the order and decree sustaining the defendants' demurrer to the plaintiffs' bill in equity was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration thereof, the Court does allow the said appeal to the said plaintiffs upon the plaintiffs giving a bond according to law in the sum of \$500.00, which shall operate as a supersedeas bond.

JAS. H. BEATTY,

Judge of the Circuit Court for the District of Idaho.

[Endorsed]: No. 68. United States Circuit Court, Southern Division, District of Idaho. Jesse M. Smith et al. vs. Thomas G. Lowe et al. Order Allowing Appeal. Filed April 5th, 1902. A. L. Richardson, Clerk,

In the Circuit Court of the United States, in and for the District of Idaho.

JESSE M. SMITH, EPHRIAM P. ELLISON, ELIAS ADAMS, JOHN W. THORNLEY, JAMES W. CHIPMAN, JAMES LOVE, ANTHON J. NEILSON, BENJAMIN R. MEEK, PETER A. NEILSON, JOSEPH S. NEILSON, HANS S. NEILSON, HEBER A. SMITH, ANDREW ALLEN, ELLSWORTH ALLEN, RILEY ALLEN, ISAAC DUNYON, AURELIUS FITZGERALD, ISAAC FITZGERALD, HENRY CHIPMAN, BENJAMIN DANSIE, THOMAS MERCER, WILLIAM AYLETT, HEBER AYLETT, JOHN A. EGBERT, GEORGE DANSIE, FRANK DANSIE, WILLIAM CRANE, I. J. FREEMAN, JOSEPH R. OLSEN, L. PARKER,

Complainants,

vs.

THOMAS G. LOWE, JOHN R. THOMAS, DAVID W. JONES, D. H. ANDERSON, JOHN DOE, and RICHARD ROE, Whose Other or True Names are Unknown,

Defendants.

Praeceptum for Transcript.

To A. L. Richardson, Clerk of said Court:

You will please, with all convenient speed, prepare transcript in the above-entitled cause of the recor

thereof on appeal of the said plaintiffs to transmit to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, and you will embody therein the pleadings in said cause, and the orders and decree entered therein sustaining the defendants' demurrer and dismissing the plaintiffs' appeal in equity, and all other proceedings relating thereto and this appeal.

JAMES H. MOYLE,
LINDSAY R. ROGERS,
ARTHUR BROWN,

Attorneys for Plaintiffs and Appellants.

[Endorsed]: No. 68. United States Circuit Court,
Southern Division, District of Idaho. Jesse M. Smith et
al. vs. Thomas G. Lowe et al. Praecipe for Transcript.
Filed April , 1902. A. L. Richardson, Clerk.

In the Circuit Court of the United States, in and for the District of Idaho.

JESSE M. SMITH, EPHRAIM P. ELLISON, ELIAS ADAMS, JOHN W. THORNLEY, JAMES W. CHIPMAN, JAMES LOVE, ANTHON J. NEILSON, BENJAMIN R. MEEK, PETER A. NEILSON, JOSEPH S. NEILSON, HANS S. NEILSON, HEBER A. SMITH, ANDREW ALLEN, ELLSWORTH ALLEN, RILEY ALLEN, ISAAC DUNYON, AURELIUS FITZGERALD, ISAAC FITZGERALD, HENRY CHIPMAN, BENJAMIN DANSIE, THOMAS MERCER, WILLIAM AYLETT, HEBER AYLETT, JOHN A. EGBERT, GEORGE DANSIE, FRANK DANSIE, WILLIAM CRANE, I. J. FREEMAN, JOSEPH R. OLSEN, L. PARKER,

Complainants,

vs.

THOMAS G. LOWE, JOHN R. THOMAS, DAVID W. JONES, D. H. ANDERSON, JOHN DOE and RICHARD ROE, Whose Other or True Names are Unknown,

Defendants.

Citation.

To Thomas G. Lowe, John R. Thomas, David W. Jones, D. H. Anderson, John Doe, and Richard Roe, Whose Other or True Names are Unknown, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, thirty days from and after the date this citation appears dated, pursuant to an appeal allowed and filed in the clerk's office of the Circuit Court of the United States for the Ninth Circuit, District of Idaho, wherein Jesse M. Smith, Ephraim P. Ellison, Elias Adams, John W. Thornley, James W. Chipman, James Love, Anthon J. Neilson, Benjamin R. Meek, Peter A. Neilson, Joseph S. Neilson, Hans S. Neilson, Heber A. Smith, Andrew Allen, Ellsworth Allen, Riley Allen, Isaac Dunyon, Aurelius Fitzgerald, Isaac Fitzgerald, Henry Chipman, Benjamin Dansie, Thomas Mercer, William Aylett, Heber Aylett, John A. Egbert, George Dansie, Frank Dansie, William Crane, I. J. Freeman, Joseph R. Olsen, L. Parker, are appellants and you are appellees, to show cause, if any there be, why the order and decree rendered against the said appellants sustaining the defendants' demurrer to the plaintiffs' appeal in equity and dismissing the said appeal as in said appellant's motion, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable JAMES H. BEATTY, United States District Judge for the District of Idaho, and one of the Judges of the Circuit Court of said District, this 8 day of April, A. D. 1902.

JAS. H. BEATTY,

Judge of Circuit Court for the District of Idaho.

I hereby, this 25th day of April, 1902, admit due personal service of this citation on behalf of the defendant above named and appellees therein.

FRANK MARTIN,
Attorney for Appellees.

[Endorsed]: No. 68. United States Circuit Court, District of Idaho. Jesse M. Smith et al., Plaintiffs, vs. Thomas G. Lowe et al., Defendants. Citation. Filed on return, April 25th, 1902. A. L. Richardson, Clerk.

Return of Record.

And thereupon it is ordered by the Court that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

Attest:

[Seal]

A. L. RICHARDSON,
Clerk.

*In the United States Circuit Court, Ninth Judicial Circuit,
District of Idaho.*

JESSE M. SMITH et al.,

Plaintiffs,

vs.

THOMAS G. LOWE et al.,

Defendants.

Clerk's Certificate to Transcript.

I, A. L. Richardson, clerk of the Circuit Court of the United States, in and for the District of Idaho, do hereby certify the foregoing transcript of pages, numbered from 1 to 47, inclusive, to be a full, true and correct copy of the pleadings and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$33.30, and that the same has been paid by the appellant.

Witness my hand and the seal of said Circuit Court affixed at Boise, Idaho, this 28th day of April, 1902.

[Seal]

A. L. RICHARDSON,

Clerk.

[Endorsed]: No. 837. In the United States Circuit Court of Appeals for the Ninth Circuit. Jesse M. Smith, Ephraim P. Ellison, Elias Adams, John W. Thornley, James W. Chipman, James Love, Anthon J. Neilson, Benjamin R. Meek, Peter A. Neilson, Joseph S. Neilson, Heber A. Smith, Hans S. Neilson, Andrew Allen, Ellsworth Allen, Riley Allen, Isaac Dunyon, Aurelius Fitzgerald, Henry Chipman, Benjamin Dansie, Thomas Mercer, William Aylett, Heber Aylett, John A. Egbert, George Dansie, Frank Dansie, William Crane, I. J. Freeman, Joseph R. Olsen, L. Parker, Appellants, vs. Thomas G. Lowe, John R. Thomas, David W. Jones, D. H. Anderson, John Doe, and Richard Roe, Whose Other or True Names are Unknown, Appellees. Transcript of Record. Upon Appeal from the United States Circuit Court for the District of Idaho.

Filed May 8, 1902.

F. D. MONCKTON,

Clerk.